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BEFORE THE
SURFACE TRANSPORTATION BOARD



KANSAS CITY POWER & LIGHT
COMPANY

Complainant,

v

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No 42095

ENTERED
Office of Proceedings

AUG 20 2007

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**REPLY EVIDENCE OF COMPLAINANT
KANSAS CITY POWER & LIGHT COMPANY**

KANSAS CITY POWER & LIGHT
COMPANY

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By: William G Riggins
General Counsel
Kansas City Power & Light Company
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

Of Counsel:

Slover & Loftus
1224 Seventeenth Street, N W
Washington, D.C. 20036

Kelvin J Dowd
Donald G Avery
Daniel M Jaffe
Slover & Loftus
1224 Seventeenth Street, N W
Washington, D C 20036
(202) 347-7170

Dated August 20, 2007

Attorneys & Practitioners

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**I. Counsel's Argument and
Summary of Evidence**

BEFORE THE
SURFACE TRANSPORTATION BOARD

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PART I

COUNSEL'S ARGUMENT AND SUMMARY OF EVIDENCE

A. Introduction

In accordance with the order of the Surface Transportation Board ("STB" or "Board") served May 4, 2007. Complainant Kansas City Power & Light Company ("KCPL") hereby replies to the Opening Evidence and Argument filed by Defendant Union Pacific Railroad Company ("UP") on July 30, 2007

As the Board is aware, the outcome of this maximum coal rate case turns on the proper calculation of variable costs, because the parties have stipulated that if and to

the extent any of the challenged rates exceeds the jurisdictional threshold (180% of variable costs), the maximum rates should be set at the 180% level

The parties' respective calculations of variable costs differ substantially, even though the number of issues dividing the parties are few. In its Opening Evidence and Argument ("*UP Opening*"), UP purports to demonstrate that the variable costs of transporting KCPL's coal from mines in the Powder River Basin ("PRB") to KCPL's Montrose generating station at Ladue, Missouri ranged from \$10.96 to \$11.12 per ton during the first quarter of 2007, depending on origin. By contrast, KCPL calculated variable costs of between \$7.98 and \$9.01 for the same period and same origins.¹

The largest single source of the disparity between the parties' calculations is UP's insistence on treating the revenues received by the Missouri & Northern Arkansas Railroad ("MNA") for its delivery portion of the interline Montrose movement as a component of UP's variable costs, rather than as a straightforward division of revenues between connecting line haul carriers.² However, UP's treatment of the MNA revenues is

¹ KCPL also indexed its variable cost calculations to establish rates for 2Q07, UP did not

² Other irregularities in UP's calculations account for the balance of the disparity, and are addressed in Part II-A, below

both inconsistent with prior Board and Interstate Commerce Commission ("ICC") precedent, and completely without merit ³

B. The Proper Treatment of MNA's Revenue Division

UP advances three arguments in defense of its treatment of the MNA revenue shares (a) that they are simply "third party payments" of the sort that have been recognized as components of variable costs in prior Board and ICC decisions, (b) that such treatment is necessary in this case to account for costs that "are not captured as costs in URCS," and that can be included without implicating the Board's policy reasons for rejecting other movement-specific adjustments to URCS in *Major Issues*, and (c) that alternative approaches, including KCPL's costing of the MNA portion of the haul using Western Region URCS costs, are "conceptually flawed." In fact, however, none of these arguments for including the MNA revenue shares in variable costs can withstand scrutiny.

1. The Charges Collected by the MNA are a Division

The MNA revenues from the KCPL traffic are line haul divisions, and not "switching" or "terminal" charges. In the first place, MNA's 154-mile service between Kansas City and Ladue is plainly a line haul service—it extends far beyond any recognized switching limits, it involves use of road crews and road locomotives, not yard crews or yard switchers, and it completely replicates what was indisputably line haul service.

³ As UP admits, its addition of the MNA divisions to its calculation of variable costs is directly contrary to the Board's decision in Ex Parte No. 657 (Sub-No. 1), *Major Issues in Rail Rate Cases* (decision served October 30, 2006) ("*Major Issues*").

provided by the former MKT Railroad prior to its absorption into UP. See ICC Docket No. 41528, *Kansas City Power & Light Company v Missouri Pacific Railroad Company, et al*. It is for all practical purposes operationally indistinguishable from UP's longer line haul operation of the trains between the PRB and Kansas City. Moreover, as KCPL noted in its opening evidence, the 1992 arms-length Lease Agreement signed by both UP and MNA makes MNA fully responsible for providing common carrier line haul rail service on its leased lines, including the line traversed by the KCPL coal trains. The Lease specifically prohibits UP from conducting operations on the lines except in a limited number of carefully circumscribed circumstances, and explicitly characterizes MNA's revenues from its operation of the KCPL (and other shippers') trains as a "division." The fact that MNA's division is expressed as a fixed amount rather than as a percentage of the through rates is of no consequence. The parties' choice, or more likely, UP's choice of a fixed payment approach does not alter its status as a revenue division.⁴ See, e.g., *Port Huron & Duluth Steamship Co v Pennsylvania R R*, 50 I C C 157, 160 (1918) (western lines' division of eastbound rates was 25%, but their divisions of westbound rates were fixed amounts per hundredweight), *Baltimore & Ohio R R v Hoboken Manufacturers' R R*, 194 I C C 517, 525 (1933) (Eastern carriers' divisions stated in terms of

⁴ The terms of the Lease strongly indicate UP's superior bargaining leverage, and its desire to retain to itself the discretion to price the entire line-haul move. See Appendix F. However, that leverage cannot alter the nature of MNA's service, which should be the determining factor for purposes of costing the subject movement.

percentages of inter-district rates, but Defendant's division stated as fixed amount per hundredweight)

2. Prior STB and ICC Precedents Do Not Support UP

UP cites six cases which it claims support its treatment of the MNA per car division as a variable cost. However, none of those cases actually involved revenue divisions remitted to connecting line haul carriers. *Public Service of Colorado*⁵ and *TMPA*⁶ involved payments to third party non-carrier contract loaders at origin; *Carolina Power*⁷ involved trackage rights payments to a carrier that was not participating in the line haul movement at issue; and *FMC Wyoming*,⁸ *Pielet Bros*,⁹ and *DRGW Petition*¹⁰ all involved payments to *switching* carriers that likewise were not participating in the line haul movements

⁵ Docket No. 42057, *Public Service of Colorado v Burlington Northern & Santa Fe Railway* (unprinted decision served June 8, 2004)

⁶ *Texas Municipal Power Agency v Burlington Northern & Santa Fe Railway*, 6 S T B 573 (2003)

⁷ Docket No. 42072, *Carolina Power & Light Company v Norfolk Southern Railway* (unprinted decision served December 23, 2003)

⁸ *FMC Wyoming Corp v Union Pacific R R*, 4 S T B 699 (2000)

⁹ Docket No. 39756, *Pielet Bros Trading Co v Chicago & N W Transp Co* (unprinted decision served August 11, 1987)

¹⁰ Docket No. 39060, *Petition of Denver & R G W R R & Salt Lake, G & W Ry for Review of a Decision of the Public Service Commission of Utah* (unprinted decision served November 14, 1985)

In point of fact, UP has not cited a single authority, and KCPL has not found any, that would support the treatment of MNA's line haul revenue division as a component of UP's variable costs. To the contrary, as the Board made clear in the *Bottleneck* cases,¹¹ the revenue shares of the individual line haul carriers participating in a through movement – far from being “costs” to be considered in determining the jurisdictional threshold applicable to the rate(s) for such service – are *completely irrelevant* to that determination. When an affected shipper wishes to challenge the rate(s) it is paying for a through movement, it must challenge the *entire* rate, and the jurisdictional threshold determination likewise must be based upon the total variable costs incurred by all of the participating carriers. In making this determination, the share of the rate remitted by the collecting carrier to another participating carrier plays no role and typically is not even disclosed to the shipper.¹² This is the treatment contemplated by URCS,¹³ and it is the treatment consistently afforded line haul divisions of revenues in

¹¹ *Central Power & Light Co. v. Southern Pacific Transp. Co.*, 1 S.T.B. 1059 (1996) (“*Bottleneck I*”), *clarified*, 2 S.T.B. 235 (1997) (“*Bottleneck II*”).

¹² The MNA divisions that UP seeks to treat as variable costs in this proceeding fit this pattern, as are they set forth in documents that UP has designated “Highly Confidential.” The original Lease Agreement between UP's predecessor and MNA dated December 11, 1992 is public, because MNA filed it at the Securities and Exchange Commission, and that document sets forth MNA's initial divisions. However, subsequent amendments to the Lease have not been made public.

¹³ In particular, URCS Phase III provides for the separate determination of variable costs for each participating carrier in an interline movement, classifying them as “Originate and Deliver,” “Receive and Deliver,” or “Receive and Terminate” carriers depending on which portion of the movement they handle.

past maximum rate litigation. Accordingly, while *Major Issues'* exclusion of third party payments from variable costs may have changed the treatment of switching fees, etc., it did not alter the well-established treatment of through rates and divisions in maximum rate cases. Rather than asking for a return to past practice, UP actually is asking for a complete reversal of prior law and regulatory policy.

3. The MNA Revenue Divisions Are Not "Costs" For URCS Purposes

UP next argues that treatment of the MNA revenue division as a variable cost is appropriate because doing so does not entail an "adjustment" to system average costs, but only the addition of a cost element that is completely missing from URCS, and that can be added without affecting the URCS-based calculation of (other) variable cost components.

This argument also is unavailing, because the MNA division is not a "cost" at all for regulatory purposes, and so manifestly it is not a "variable" cost of the service at issue. Rather, the MNA division constitutes MNA's *entire compensation* for its portion of the KCPL line haul service, and as such it includes not only the variable costs incurred by MNA in performing such service, but also a contribution to MNA's fixed costs, and its entire profit on the KCPL service. While the MNA portion of the KCPL haul indeed generates variable costs, those costs are properly measured by applying URCS to the

MNA directly, as KCPI. has done, not by mischaracterizing the entire MNA division as a cost to UP ¹⁴

Secondly, if UP were allowed to treat any divisions payments to MNA as a variable cost, the Board would be hard-pressed to prevent carriers in future cases from *completely insulating their rates from STB review*, no matter how high those rates might be, simply by agreeing with one another to assume responsibility for service over each others' lines and treating the operator's entire rates as variable costs for the "responsible" carrier (and subject to a 180% mark-up). UP's protestation that its arrangements with MNA were not "gamed" to achieve a favorable result in this rate case is a red herring, and does nothing to answer this very real risk of accepting its proposed treatment of the MNA divisions, which differs only in magnitude from the spectre just described

¹⁴ The fact that URCS completely omits remittances of revenue divisions from variable costs is further evidence that such remittances are not properly treated as costs, since URCS was carefully designed to provide a complete and comprehensive representation of all costs of service recognizable for regulatory purposes

It should also be noted that UP's treatment of the MNA revenue divisions as a "cost" does not, as UP suggests, involve "nothing more than basic addition" (*UP Opening* at I-9). Rather, it entails (a) the deletion of the MNA portion of the URCS-based variable costs of the movements at issue, (b) an adjustment (increase) of URCS-based UP locomotive and fuel costs by including the MNA mileage (as if UP were operating over the entire route of movement to Ladue), and (c) the combination of such locomotive and fuel costs along with the MNA division to URCS-based UP costs for the PRB-Kansas City segment. Even if there were substantive merit to UP's adjustments (and there is not), these plainly constitute "movement-specific adjustments" to URCS system average variable costs.

4. Treatment of the KCPL Movement as an Interline Movement for Costing Purposes is Neither “Conceptually Flawed” Nor Inconsistent with the Operative Facts

In a further effort to justify its inclusion of the entire MNA revenue division as a variable cost in its calculations of the jurisdictional threshold. UP argues that all the other possible methods for costing the MNA portion of the Montrose movement – including in particular the method KCPL used, *i.e.*, treatment of the movement as an interline movement (which it plainly is) and using Western Region URCS costs to develop MNA’s variable costs – are “conceptually flawed” and will produce “flawed results.” Upon examination, however, it becomes clear that UP’s arguments against costing the movement as an interline movement are without merit.

UP first argues that “MNA’s costs are irrelevant” because “UP is the only party to the challenged rate” and has undertaken responsibility (in its published rate) for the entire movement (*UP Opening* at I-12). This argument fails, however, because MNA already has committed to UP in the lease agreement to interchange KCPL’s Montrose traffic with UP for a fixed division, and granted UP its blanket concurrence in advance for UP’s establishment of all rates and service terms in its sole discretion, so long as MNA’s division is preserved. The Agreement between UP and MNA specifically contemplates that MNA will not be a separately identified party to the line haul rate

publications, notwithstanding its obvious participation in the joint haul¹⁵ Consequently, UP had no need to put MNA's name on the published rate, or involve MNA in the publication in any way so long as that carrier's division is respected. The fact that it chose not to do so has no effect on the character of the subject service.

More fundamentally, though, UP's argument is circular. It assumes the conclusion that MNA's revenue division is a "variable cost" to UP, and that it is just UP's costs, and not the total variable costs of the entire interline movement, that are relevant to the jurisdictional threshold determination. As previously discussed, however, the jurisdictional threshold – and therefore variable costs – must be determined with reference to the *entire* interline movement. In that context, MNA's divisions are not simply variable costs; they are MNA's entire compensation for its line haul portion of the movement at issue, including a contribution to its fixed costs and profit. As such, they have no place in the jurisdictional determination of the variable costs of this interline movement.

UP's second argument is that it would be "grossly unfair to UP" to treat MNA as a participating carrier receiving a division, because MNA will not bear any of the burden of a rate prescription or reparations award in this case (since its share of the revenues is fixed). Under any objective assessment, this claim rings hollow. UP

¹⁵ It is well-settled that the use of concurrences in advance for interline rate actions and/or separate service terms does not change the "joint" character of the interline haul. See, e.g., *Society of Plastics Industry, Inc. v. ICC*, 955 F.2d 722, 726-728 (D.C. Cir. 1992).

voluntarily entered into such an arrangement with MNA – presumably because it did not want to share future rate increases with the smaller carrier – and cannot now be heard to complain about it simply because it is facing a possible rate reduction. In this regard, it also is significant that (a) UP has not given MNA a share of the dramatically-increased rates that it has been assessing on KCPL's coal traffic since the most recent contract between the parties expired, and (b) the maximum reasonable rates for the Montrose service as properly calculated still provide revenues to UP that are higher than those that UP voluntarily agreed to accept under its most recent contract with KCPL.¹⁶ UP is merely being asked to give up some of its desired increases in those revenues. UP's protestations of "unfairness" should be summarily dismissed.

UP's final argument against costing the Montrose movement as an interline UP/MNA movement is that "Western Region URCS costs are not an appropriate measure of the cost to move the issue traffic between Kansas City and Montrose" (*UP Opening* at I-12). Just what UP means by this rather cryptic argument is unclear. If UP is saying that regional URCS costs are an inaccurate surrogate for actual, carrier-specific variable costs, KCPL would agree, regional URCS costs, based on Class 1 carriers, would typically overstate the costs incurred by a short line.¹⁷ However, because MNA is a small carrier

¹⁶ See KCPL, Opening Exhibit IV-1

¹⁷ A short line operator such as MNA presumably has a lower overall cost structure than the UP because it would otherwise not have an economic incentive to take over what must have been a lower or no profit line for UP.

and as such is not required to file R-1 reports or maintain the records that would be needed to generate an MNA-specific URCS, the STB has mandated that regional URCS costs be used as a surrogate.¹⁸ If UP is instead arguing that *MNA* costs, however accurate, are not an appropriate measure, then it is simply repeating its first argument, which gains nothing from such repetition.¹⁹

5. UP's Improper Add-On to Locomotive and Fuel Costs

As noted *supra*, UP compounded its erroneous addition of the entire MNA revenue division to its variable cost calculations by adding an estimate of the additional locomotive and fuel costs UP incurs as a result of its agreement to let MNA use UP locomotives in run-through service. There is no basis for such an add-on to URCS-based variable costs. This is so because the URCS-based variable costs calculated for MNA already include western region average locomotive and fuel expense factors for the MNA portion of the Montrose movement, and of course the URCS-based variable costs

¹⁸ See *Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Costing Purposes*, 5 I C C 2d 894, 917-18 (1989)

¹⁹ UP suggests in a footnote that if the Montrose movement is treated as an interline movement, MNA becomes an indispensable party and KCPL's complaint would have to be dismissed. It cites no authority for this assertion, however, which is not surprising, since it is wrong. The law is clear that through movement participants are not indispensable parties to litigation over the through rate if they will not be affected by the outcome of the litigation. See, e.g., *Ford Motor Co. v I C C*, 714 F.2d 1157 (D.C. Cir. 1983). In this case, because UP has complete control over the assailed rate levels, UP is the only railroad participating in the Montrose movement that has violated 49 U.S.C. § 10701. Moreover, because MNA's divisions are fixed, UP is the only carrier that will have to pay reparations and receive lower revenues in the future if KCPL prevails. Accordingly, MNA is not an indispensable party.

calculated for UP include UP system average locomotive and fuel costs for the UP portion of the movement. The use of UP locomotives for the MNA portion of the movement presumably increases UP's variable costs and reduces MNA's variable cost, but the net effect of the run-through operation – which the two railroads must believe increases the operation's efficiency, or they would not have initiated it – is in all likelihood a *reduction* in the *total* variable cost of the through movement. Since it is the total variable cost of the movement that matters for jurisdictional threshold purposes, any adjustment to that total based on the run-through arrangement would have to be a decrease, not an increase as proposed by UP.

6. An Alternative Approach to Montrose Variable Costs.

While KCPL submits that the law and Board policy require that the UP-Kansas City-MNA through movement of coal from the PRB to Montrose should be costed as an interline movement since that is what it is, it may be useful to consider another way in which the movement could be costed for jurisdictional threshold purposes that would capture the costs of all parts of the movement without the fatal defects of UP's approach. It also essentially confirms the accuracy of the results of KCPL's Opening methodology.

An alternative approach to costing the Montrose movement might be to treat it as a single-line UP movement, in light of UP's insistence that it should be deemed solely responsible for the entire service from origins to destination. This entails

application of the UP URCS to the entire movement, rather than just to the UP segment from the PRB to Kansas City. As shown in Part II-A below, the results of this approach are very similar to those produced by costing the movement as an interline movement.

UP argues that single-line treatment is not appropriate because: (a) MNA provides most of the services between Kansas City and Ladue and its costs are not reflected in UP's URCS, (b) UP's costs are not a reasonable surrogate for MNA's costs, and (c) "UP and MNA incur significant costs to interchange the traffic in Kansas City" that are not picked up under single-line costing (*UP Opening* at I-11).²⁰ Although KCPI is not advocating this approach over its methodology used on *Opening*, none of these arguments detract from the validity of the single-line costing approach as a confirming tool. The first two arguments actually cut against UP as a Class I carrier. UP's system average costs would be expected to exceed those of a small carrier such as MNA, and UP has not alleged (let alone shown) otherwise, so application of UP URCS costs to the MNA segment actually would overstate MNA's true variable costs.²¹ As for the third argument, UP has failed to explain what "significant costs" it and MNA actually incur at their interchange. Given that the KCPI trains are operated in run-through service by UP

²⁰ We note that UP seems to want to have it both ways – the movement should not be treated as an interline movement because (UP says) UP is responsible for the entire haul, but single line treatment is also wrong because the traffic is interchanged to MNA at Kansas City.

²¹ Of course, costing the movement as an interline movement entails application of regional URCS costs to the MNA segment, rather than MNA-specific URCS costs, but

and MNA, with no interchange switching, it would appear that there are no significant interchange costs involved in the Montrose movement

7. Conclusion

For the foregoing reasons, UP's primary variable cost presentation must be rejected, because it treats the entire MNA revenue division as a variable cost and consequently overstates significantly the true variable costs of the MNA segment of the Montrose movement. The correct approach is to cost the movement using UP URCS costs for the UP operation between the PRB and Kansas City, and Western Region URCS costs for the MNA operation between Kansas City and the destination at Ladue

C. UP's Alternative Variable Cost Calculations Are Also Overstated

In addition to its primary variable cost presentation that, as discussed in the preceding section, is fatally flawed due to its treatment of the MNA revenue division as a cost, UP also submitted an alternative cost calculation that omitted the MNA division and instead used Western Region URCS costs to develop variable costs for the MNA portion of the Montrose movement. However, such costs are also flawed and substantially overstated, for the reasons summarized in Part II-A of this Reply

the comparison remains valid because UP costs are higher than the regional average. *see* Part II-A, *infra*

D. UP's Unreasonable Practice

In its Opening Evidence, KCPL demonstrated that UP's unilateral imposition of a 2,100,000 ton annual cap on the volume of coal that KCPL could tender under the challenged rates constituted an unreasonable practice, in violation of 49 U.S.C. § 10702. *See* KCPL Opening Evidence at I-24-27, IV-1-9. UP presented no evidence in support of the reasonableness of its volume limitation, despite the fact that it was placed on notice of KCPL's challenge²²

Although KCPL is the party with the burden of proof on the unreasonable practice issue, the two-stage simultaneous filing procedure that the Board has mandated for this case will preclude KCPL from having an opportunity to respond to whatever arguments or evidence UP may choose to submit for the first time on Reply. The fundamental unfairness of this circumstance cannot be ignored.

Board precedent holds that a party cannot present new arguments or evidence for the first time in its final filing, when the opposing party no longer has an opportunity to respond²³. Particularly given the balance of the burden of proof, application of this rule here would require that any new arguments and/or evidence that

²² *See* Complaint, ¶ 27, letter from Kelvin J. Dowd, Esq. to Michael I. Rosenthal, Esq., December 29, 2005 (Reply electronic workpaper "12-29-05 letter.pdf").

²³ *See* Docket No. 42069, *Duke Energy Corp. v. Norfolk Southern Railway Co.* (unprinted decision served November 6, 2002) at 13-15.

UP attempts to present on Reply should be stricken. Should the Board deem such an outcome as unduly draconian, then at a minimum KCPL should be granted the option to submit limited rebuttal evidence directly responsive to the new evidence and arguments offered by UP on Reply.

E. Conclusion and Prayer For Relief

Based upon the evidence presented herein and in KCPL's Opening Evidence, the Board should find that UP's Circular 111 Item 4140-Series rates (including the fuel surcharge) applicable to Montrose coal shipments both in aluminum and steel railcars exceed maximum reasonable levels, and therefore are unlawful under 49 U.S.C. § 10701(d). In accordance with 49 U.S.C. § 10704(a) and consistent with the stipulations governing this case, the Board should enter an order prescribing the maximum rates that lawfully may be charged by UP at 180% of the variable cost of the subject service, as determined in accordance with the record in this proceeding.

KCPL further requests that the Board order reparations, plus applicable interest, for overcharges imposed by UP from January 1, 2006 forward. These overcharges equal \$8,172,553 through June 30, 2007 (before interest). See Revised Exhibit II-A-7.

Finally, the Board should find that the 2,100,000 ton annual shipment volume limitation imposed by UP on KCPL's Montrose traffic constitutes an

unreasonable practice in violation of 49 U S C § 10702, and order either its deletion from Circular 111 Item 4140-Series, or its revision to not less than 2,400,000 tons

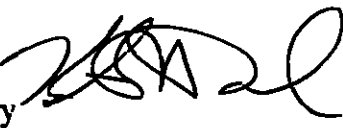
Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

By William G Riggins
General Counsel
Kansas City Power & Light Company
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

Of Counsel:

Slover & Loftus
1224 Seventeenth Street, N.W
Washington, D C 20036

Kelvin J Dowd 
Donald G Avery
Daniel M Jaffe
Slover & Loftus
1224 Seventeenth Street, N.W
Washington, D.C 20036
(202) 347-7170

Dated August 20, 2007

Attorneys & Practitioners

II-A. Quantitative Market Dominance

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PART II

MARKET DOMINANCE – VARIABLE COSTS

In this Reply Part II-A, KCPL responds to the variable cost evidence submitted by UP on July 30, 2007.

As observed in Part I, the parties have stipulated that UP has qualitative market dominance over the traffic at issue, and that insofar as the challenged rates exceed the jurisdictional threshold of 180% of variable costs, maximum rates should be prescribed at the jurisdictional threshold level. Accordingly, both parties limited their opening cost-related evidence to their respective calculations of variable costs. In so doing, KCPL and UP also proceeded on the basis of a number of stipulated traffic and operating characteristics for the issue movements

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PART II

MARKET DOMINANCE – VARIABLE COSTS

In this Reply Part II-A, KPCL responds to the variable cost evidence submitted by UP on July 30, 2007

As observed in Part I, the parties have stipulated that UP has qualitative market dominance over the traffic at issue, and that insofar as the challenged rates exceed the jurisdictional threshold of 180% of variable costs, maximum rates should be prescribed at the jurisdictional threshold level. Accordingly, both parties limited their opening cost-related evidence to their respective calculations of variable costs. In so doing, KCPL and UP also proceeded on the basis of a number of stipulated traffic and operating characteristics for the issue movements.

Notwithstanding those stipulations, the parties' variable cost calculations are quite different. In Part I, KCPL addressed the largest single source of that disparity, UP's improper inclusion of the entire MNA revenue division as if it were a variable cost. In this Part, KCPL addresses the sources of the remaining disparities between the parties' calculations. KCPL also restates its Opening Evidence calculations to reflect the acceptance of UP's figures for average tons per carload for the two entries where the parties' figures differed.

Additionally, and in further response to UP's claim that costing the movement at issue as an interline movement is inaccurate, for comparison purposes KCPL has developed variable costs using an alternative approach: treating the entire movement as a single-line UP haul. This alternative calculation produces variable costs and jurisdictional threshold levels that are almost the same as those KCPL developed using the Board-mandated interline approach.

1. Summary of KCPL's Variable Cost Analysis and Resulting Revenue to Variable Cost Ratios

a. Interline Costing

As discussed above and in Part I, KCPL has developed the variable costs of the UP-MNA interline movement using the Board-prescribed approach for such movements. Specifically, KCPL developed the variable costs for the UP and MNA portions of the movement separately, by inputting the known operating parameters – including the fact that this is a two-carrier movement with an interchange at Kansas City

– into the applicable URCS Phase III cost programs (UP's 2006 URCS for the UP segment and 2006 Western Region URCS for the MNA segment) The two railroads' variable costs then were totaled to yield the variable costs of the through movement

In this Reply, KCPL has updated its variable cost calculations as presented in its Opening Evidence in two respects: it has accepted UP's figures for average tons per carload for the two entries where the parties' figures differed, and it has corrected for a minor indexing error in its calculations The results of KCPL's updated calculations of variable costs for transporting coal from the PRB to Montrose for 1Q06-2Q07 are summarized in revised Table II-A-1 below

TABLE II-A-1 (Revised)
Summary of Rate Variable Cost and Ratio of Revenue to Variable Cost for
Orin Subdivision Mines to Montrose in Aluminum Cars - 1Q06 through 2Q07

| Origin | Time Period | Rate/Ton | UP/MNA Combined Variable Cost | Ratio of Revenue to Combined Variable Cost |
|------------------------|-------------|----------|----------------------------------|--|
| Belle Ayr | 1Q06 | \$16.96 | \$7.90 | 215% |
| | 2Q06 | \$16.90 | \$8.09 | 209% |
| | 3Q06 | \$17.57 | \$8.23 | 213% |
| | 4Q06 | \$17.33 | \$7.92 | 219% |
| | 1Q07 | \$17.59 | \$7.98 | 220% |
| | 2Q07 | \$16.95 | \$8.31 | 204% |
| Black Thunder | 1Q06 | \$16.89 | \$7.70 | 219% |
| | 2Q06 | \$16.93 | \$7.89 | 215% |
| | 3Q06 | \$17.56 | \$8.02 | 219% |
| | 4Q06 | \$17.10 | \$8.10 | 211% |
| | 1Q07 | \$17.48 | \$9.01 | 194% |
| | 2Q07 | \$17.35 | \$8.02 | 216% |
| Black Thunder South | 1Q06 | \$16.68 | \$7.59 | 220% |
| | 2Q06 | \$17.05 | \$7.80 | 218% |
| | 3Q06 | \$17.61 | \$7.97 | 221% |
| | 4Q06 | \$17.59 | \$7.67 | 229% |
| | 1Q07 | \$17.61 | \$8.55 | 206% |
| | 2Q07 | \$17.35 | \$8.04 | 216% |

| Origin | Time Period | Rate/Ton | UP/MNA Combined Variable Cost | Ratio of Revenue to Combined Variable Cost |
|----------------|-------------|----------|----------------------------------|--|
| Caballo | 1Q06 | \$17.36 | \$8.02 | 216% |
| | 2Q06 | \$16.95 | \$8.07 | 210% |
| | 3Q06 | \$17.54 | \$8.24 | 213% |
| | 4Q06 | \$17.32 | \$7.92 | 219% |
| | 1Q07 | \$17.60 | \$8.00 | 220% |
| | 2Q07 | \$16.77 | \$8.33 | 201% |
| Jacobs Ranch | 1Q06 | \$16.69 | \$7.69 | 217% |
| | 2Q06 | \$16.92 | \$7.95 | 213% |
| | 3Q06 | \$17.59 | \$8.15 | 216% |
| | 4Q06 | \$17.22 | \$8.29 | 208% |
| | 1Q07 | \$17.58 | \$8.43 | 208% |
| | 2Q07 | \$16.88 | \$8.14 | 207% |
| Antelope | 2Q07 | \$16.90 | \$7.84 | 215% |
| Caballo Rojo | 2Q07 | \$16.90 | \$8.24 | 205% |
| Coal Creek | 2Q07 | \$16.90 | \$8.19 | 206% |
| Cordero | 2Q07 | \$16.90 | \$8.20 | 206% |
| North Antelope | 2Q07 | \$16.90 | \$7.89 | 214% |
| Rochelle | 2Q07 | \$16.90 | \$7.90 | 214% |

Private and railroad provided cars were used in Montrose service. The URCS Phase III variable cost per ton shown is an average of the cost per ton of privately provided cars and the cost per ton of railroad provided cars weighted on the percentage of each used in the quarterly movement from the specified origin. The percentage for each affected quarter and origin are shown in Table II-A-5 of KCPL's Opening Evidence.

Details of the above calculations are discussed *infra* and shown in Exhibit II-A-1 (revised), and in KCPL's Reply workpapers "KCPL Reply Exhibit II-A-1 pages 1 and 2 XLS," "KCPL Reply Exhibit II-A-1 page 3 XLS," and "KCPL Revised Open Exhibit II-A-7 with interest v2.XLS."¹

b. Costing as a Single-Line UP Movement

While KCPL submits that the UP-MNA service should be costed as an interline movement under URCS, since it is clearly a two-carrier, line haul operation, in response to UP's criticisms of this approach, KCPL also has developed variable costs for the Montrose movement using an alternative approach, treating the movement as if it were a single-line UP haul from origin to destination.²

When costing the Montrose movement as if it were a single-line UP movement, the pertinent operating parameters are unchanged from the interline costing approach, except that UP is treated as an originating and terminating carrier and the UP

¹ In its Opening Evidence KCPL also included, solely for illustrative purposes, a calculation of the variable costs of the Montrose movement assuming system average rather than actual values for tare weights, private car costs, and terminal switching costs. The results of that calculation were presented in KCPL Opening Exhibit II-A-6. Because correction of the indexing error affected the 2006 UP and Western Region URCS formulations that KCPL had used, Exhibit II-A-6 is also being re-filed herewith in revised form. The revised calculation continues to use the corrected version of UP's terminal switching costs, which KCPL explained in detail in its Opening Part II-A at II-A-24 to II-A-33.

miles are changed to equal the total miles from the origin to destination. The applicable URCS (and therefore the applicable unit costs) changes, as the Western Region average URCS is no longer needed.

The results of costing the movement as a UP single-line movement are summarized in Table II-A-8, below, and explained in more detail in Exhibit II-A-8 and electronic workpaper “KCPL Reply Exhibit II-A-8 pages 1 and 2.xls,” “KCPL Reply Exhibit II-A-8 page 3.xls,” and “Rates Paid for Exhibit II-A-8.xls.” However, briefly summarized, the resulting variable costs calculations are substantially similar to those calculated by KCPL using the Board-approved method

² Prior to UP’s voluntary “spin-off” of hundreds of miles of lighter density lines to MNA in 1992, UP had a contract with KCPL to serve Montrose in single-line service from the PRB. See KCPL Opening Evidence at I-6

TABLE II-A-8
Summary of Rate, Variable Cost and Ratio of Revenue to Variable Cost for
Orin Subdivision Mines to Montrose in Aluminum Cars— 1Q06 through 2Q07
(Single Line UP Service)

| Origin | Time Period | Rate/Ton | UP Variable Cost | Ratio of Revenue to Variable Cost |
|------------------------|-------------|----------|------------------|--------------------------------------|
| Belle Ayr | 1Q06 | \$16 96 | \$7 89 | 215% |
| | 2Q06 | \$16 90 | \$8 07 | 209% |
| | 3Q06 | \$17 57 | \$8 22 | 214% |
| | 4Q06 | \$17 33 | \$7 91 | 219% |
| | 1Q07 | \$17 59 | \$7 97 | 221% |
| | 2Q07 | \$16 95 | \$8 29 | 204% |
| | | | | |
| Black Thunder | 1Q06 | \$16 89 | \$7 69 | 220% |
| | 2Q06 | \$16 93 | \$7 87 | 215% |
| | 3Q06 | \$17 56 | \$8 01 | 219% |
| | 4Q06 | \$17 10 | \$7 92 | 216% |
| | 1Q07 | \$17 48 | \$8 39 | 208% |
| | 2Q07 | \$17 35 | \$8 01 | 217% |
| | | | | |
| Black Thunder South | 1Q06 | \$16 68 | \$7 58 | 220% |
| | 2Q06 | \$17 05 | \$7 79 | 219% |
| | 3Q06 | \$17 61 | \$7 95 | 221% |
| | 4Q06 | \$17 59 | \$7 65 | 230% |
| | 1Q07 | \$17 61 | \$8 14 | 216% |
| | 2Q07 | \$17 35 | \$8 03 | 216% |
| | | | | |

| Origin | Time Period | Rate/Ton | L.P Variable Cost | Ratio of Revenue to Variable Cost |
|----------------|-------------|----------|-------------------|-----------------------------------|
| Caballo | 1Q06 | \$17.36 | \$8.01 | 217% |
| | 2Q06 | \$16.95 | \$8.05 | 211% |
| | 3Q06 | \$17.54 | \$8.23 | 213% |
| | 4Q06 | \$17.32 | \$7.91 | 219% |
| | 1Q07 | \$17.60 | \$7.99 | 220% |
| | 2Q07 | \$16.77 | \$8.32 | 202% |
| Jacobs Ranch | 1Q06 | \$16.69 | \$7.68 | 217% |
| | 2Q06 | \$16.92 | \$7.94 | 213% |
| | 3Q06 | \$17.59 | \$8.13 | 216% |
| | 4Q06 | \$17.22 | \$8.03 | 214% |
| | 1Q07 | \$17.58 | \$8.13 | 216% |
| | 2Q07 | \$16.88 | \$8.13 | 208% |
| Antelope | 2Q07 | \$16.90 | \$7.83 | 216% |
| Caballo Rojo | 2Q07 | \$16.90 | \$8.23 | 205% |
| Coal Creek | 2Q07 | \$16.90 | \$8.18 | 207% |
| Cordero | 2Q07 | \$16.90 | \$8.18 | 206% |
| North Antelope | 2Q07 | \$16.90 | \$7.88 | 215% |
| Rochelle | 2Q07 | \$16.90 | \$7.89 | 214% |

Private and railroad provided cars were used in Montrose service. The URCS Phase III variable cost per ton shown is an average of the cost per ton of privately provided cars and the cost per ton of railroad provided cars weighted on the percentage of each used in the quarterly movement from the specified origin. The percentage for each affected quarter and origin are shown in Table II-A-5 of KCPL's Opening Evidence.

2. Rates

Although both parties compared variable costs to the total amounts paid by KCPL, including both the posted rates and the fuel surcharge, UP understated the rates paid by KCPL during two quarters, 1Q06 and 1Q07. The source of this understatement

was UP's failure to consider that UP Circular 111, Item 4140-E, as amended effective January 1, 2006 (*see* Exhibit II-A-9), added rates for shipments in steel railcars which were higher than those applicable to aluminum railcars. By failing to account for shipments in steel railcars, UP understated the average rate paid in 1Q06 by \$0.18 per ton, and understated the 1Q07 average rate by \$0.09 per ton.³ *See* KCPL Reply electronic workpaper "UP rates to KCPL rates.xls."

3. Traffic and Operating Characteristics

For the most part, both parties used the same traffic and operating characteristics in their respective developments of variable costs. In this section KCPL discusses the handful of items on which the parties' evidence diverged.

a. Tons per Car

In their opening evidence the parties used the same agreed upon tons per car, except for tons per car in private cars for 4Q06 Black Thunder and 1Q07 Black Thunder South. UP used { } for 4Q06 Black Thunder and { } for 1Q07 Black Thunder South, whereas KCPL used { } and { } respectively. KCPL's has corrected its input error in this Reply evidence so as to match the agreed upon figure.

b. Terminal Switching, Tare Weights, and Private Car Costs

As KCPL explained in its Opening Evidence, URCS Phase III is designed to accommodate the use of certain actual operating parameters, if available, in lieu of

³ KCPL did not ship any Montrose coal in steel railcars during the second through fourth quarters of 2006.

system averages. in order to improve the accuracy of the results Because the actual tare weights of the KCPL shipments are known, as are the facts that UP does not pay for its use of KCPL's private cars under Item 4140-E and that no terminal switching is required for this unit train service, KCPL input those actual, known parameters into its application of URCS to the UP and MNA segments of the movement See the discussion at pages I-15 to I-19 of KCPL's Opening Evidence

UP, by contrast, failed to account for these known operating characteristics of the Montrose coal movement, and accordingly its calculations of URCS variable costs for the UP portion of the interline movement (and for the MNA portion in UP's "alternative" cost development using Western Region URCS costs for MNA) are significantly overstated

4. Indexing

In its Opening Evidence,⁴ UP developed and applied a new and unique hybrid index by combining the STB-approved composite index less fuel with a specially-developed fuel index⁵ By contrast, KCPL calculated UP and Western Region composite indices with fuel for each quarter by combining the STB-approved composite index with

⁴ See UP Opening electronic workpapers "06 Base 06 & 1Q07 QTRS-IE3-INDEX.XLS," "06 UP VC for KCPL 7-18 Batch Results XLS," and "06 UP Loco Exp – MNA Operations XLS "

⁵ It should be noted that UP did not calculate its own fuel index correctly. Specifically, UP excluded the costs of fuel used for passenger service but included the amount of gallons used in passenger service See UP Opening electronic workpaper "06 BASE 06 & 1Q07 QTRS-IE3-INDEX XLS "

the AAR Western Region fuel index, in accordance with the Board's ruling in *Wisconsin Power & Light Co v Union Pacific R R Co*, 5 S T.B. 955, 1005-06 (2001)

UP's index is also incorrect because it relies on an improper return on investment figure from UP's calculation of UP and Western Region 2006 URCS. As discussed *infra*, UP's URCS calculation erroneously includes Account 90 expenses and excludes Account 76 expenses, and uses the AAR's 2006 cost of capital submission to the Board in Ex Parte No. 558 (Sub No-10), *Railroad Cost of Capital – 2006*, which is inherently suspect and has not been approved.

5. Differences in the Parties' URCS Formulations

Although both parties developed 2006 URCS formulas for UP and MNA (Western Region URCS), there were significant differences between their resulting 2006 UP and Western Region URCS output. These differences arose from differences in the way the parties handled Accounts 90 and 76 and in their treatment of the cost of capital. These disparities are discussed in turn below.

a. Accounts 90 and 76

When the STB creates an URCS formula, it excludes Account 90 expenses and includes Account 76 expenses (*see FMC Wyoming, supra*, 4 S T B. at 747 n 96). KCPI followed these STB procedures in creating the 2006 UP and Western Region URCS that it used in its Opening Evidence. UP, by contrast, developed its 2006 URCS

formulations by including Account 90 and excluding Account 76 – precisely the reverse of the STB’s procedures (*see UP Opening* at II-A-2 n 9)

b. Cost of Capital

In developing its 2006 URCS formulas, KCPL used the Board’s most recent railroad industry cost of capital determination, which was the 2005 cost of capital specified in Ex Parte No. 558 (Sub-No 9), *Railroad Cost of Capital – 2005* (unprinted decision served September 20, 2006), in accordance with established STB procedures (*see FMC Wyoming, supra*, 4 S.T.B. at 710) In so doing, however, KCPL noted its objection to the Board’s continued reliance on the existing cost of capital methodology, which has been shown to be severely flawed, *e g* , by the filings of various parties in Ex Parte No 664 *Methodology to be Employed in Determining the Railroad Industry’s Cost of Capital*

For its part, UP substituted the proposed cost of capital submitted by the AAR to the STB on June 25, 2007 in Ex Parte No. 558 (Sub-No 10), *Railroad Cost of Capital – 2006* (pending) Not only has this proposed cost of capital not been approved, it was computed using the same flawed methodology that was placed under scrutiny in *Ex Parte No 664* UP’s reliance on it plainly is improper.

While KCPL has continued to use the most recent STB-approved cost of capital in its Reply Evidence, it should be noted that on August 14, 2007 the Board issued a Notice of Proposed Rulemaking in *Ex Parte No 664* Therein, the Board acknowledged

that the existing methodology was no longer reliable and “has been displaced by more sophisticated and precise techniques,”⁶ and proposed to employ a different methodology in making future cost of capital determinations. In the event that action is taken in that proceeding that would support a change in the cost of capital applicable to the periods at issue here, KCPL reserves the right to submit updated evidence and/or seek reopening or reconsideration insofar as necessary to incorporate such changes into the variable cost and maximum rate determinations made in this case

6. Conclusion

Although both parties developed variable costs using 2006 URCS formulas, as explained in the preceding sections, there are significant flaws in UP’s Opening Evidence. Those flaws caused a substantial upward bias in the variable costs that UP presented. Accordingly, KCPL respectfully submits that the variable cost calculations it has submitted, as corrected in this Reply Evidence, constitute the best evidence of record concerning the level of variable costs and resultant maximum rate levels applicable to KCPL’s Montrose coal traffic. KCPL therefore respectfully requests (1) that the Board award reparations for the period 1Q06 through 2Q07 as set forth in Exhibit II-A-7 (revised), submitted herewith, and (2) that the Board prescribe maximum reasonable rates on future coal shipments to Montrose at the 180% jurisdictional threshold level, as determined using the costing procedures presented by KCPL, with reparations to those

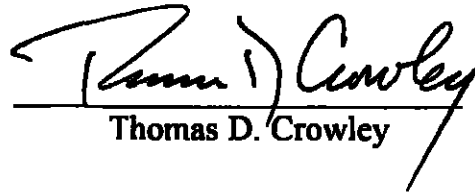
⁶ Decision served August 17, 2007 at 4

rate levels for the period beginning with 3Q07 and ending on the date the prescribed rates become effective

VERIFICATION

I, Thomas D. Crowley, verify under penalty of perjury that I have read Part II-A of the Reply Evidence of Kansas City Power & Light Company ("KCPL") in this proceeding and know the contents thereof, that I am sponsoring the evidence contained therein regarding Defendant Union Pacific Railroad Company's quantitative market dominance over the traffic at issue, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

My qualifications are set forth in the Opening Evidence filed by KCPL in this proceeding on July 30, 2007


Thomas D. Crowley

Executed on August 20, 2007

Exhibits

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•
•

EXHIBIT II-A-1 (REVISED)
REDACTED

EXHIBIT II-A-4 (REVISED)
REDACTED

EXHIBIT II-A-6 (REVISED)
REDACTED

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Total Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|------------------|-------------------------|----------------|---|--|--------------|----------------------------------|------------------------|
| 1Q 2006 | | | | | | | | | |
| 1 1/14/2006 | BAMLUC001 | Belle Ayr | 111 | 13,514 65 | \$228,349 91 | \$16 90 | \$14 22 | \$2 68 | \$36,158 96 |
| 2 1/18/2006 | BAMLUC002 | Belle Ayr | 114 | 11,734 13 | \$231,977 21 | \$19 77 | \$14 22 | \$5 55 | \$65,106 99 |
| 3 1/22/2006 | BAMLUC003 | Belle Ayr | 108 | 13,148 60 | \$222,167 04 | \$16 90 | \$14 22 | \$2 68 | \$35,181 66 |
| 4 1/26/2006 | BAMLUC004 | Belle Ayr | 107 | 12,948 55 | \$218,779 32 | \$16 90 | \$14 22 | \$2 68 | \$34,638 84 |
| 5 2/2/2006 | BAMLUC005 | Belle Ayr | 112 | 13,564 38 | \$224,899 99 | \$16 58 | \$14 22 | \$2 36 | \$32,001 91 |
| 6 2/4/2006 | BAMLUC006 | Belle Ayr | 111 | 13,527 43 | \$224,203 08 | \$16 57 | \$14 22 | \$2 35 | \$31,830 46 |
| 7 2/8/2006 | BAMLUC007 | Belle Ayr | 113 | 13,612 28 | \$225,638 04 | \$16 58 | \$14 22 | \$2 36 | \$32,058 77 |
| 8 3/22/2006 | BAMLUC008 | Belle Ayr | 115 | 13,983 70 | \$233,332 56 | \$16 69 | \$14 22 | \$2 47 | \$34,471 28 |
| 9 3/25/2006 | BAMLUC009 | Belle Ayr | 114 | 13,912 68 | \$232,138 75 | \$16 69 | \$14 22 | \$2 46 | \$34,287 51 |
| 10 3/30/2006 | BAMLUC010 | Belle Ayr | 114 | 13,878 93 | \$231,543 47 | \$16 68 | \$14 22 | \$2 46 | \$34,172 19 |
| 11 3/31/2006 | BAMLUC011 | Belle Ayr | 111 | 13,539 60 | \$225,930 70 | \$16 69 | \$14 22 | \$2 47 | \$33,384 94 |
| 12 Sub Total | | | 1,230 | 147,364 90 | \$2,498,960 07 | \$16 96 | | | \$403,293 52 |
| 13 1/4/2006 | BTUC001 | Black Thunder | 111 | 13,406 20 | \$226,581 41 | \$16 90 | \$13 86 | \$3 04 | \$40,716 20 |
| 14 1/4/2006 | BTUC002 | Black Thunder | 111 | 13,448 95 | \$227,302 03 | \$16 90 | \$13 86 | \$3 04 | \$40,844 13 |
| 15 1/8/2006 | BTUC003 | Black Thunder | 114 | 13,868 75 | \$234,362 38 | \$16 90 | \$13 86 | \$3 03 | \$42,084 32 |
| 16 1/12/2006 | BTUC004 | Black Thunder | 115 | 11,767 50 | \$232,621 90 | \$19 77 | \$13 86 | \$5 90 | \$68,475 83 |
| 17 1/12/2006 | BTUC005 | Black Thunder | 113 | 13,624 50 | \$230,219 37 | \$16 90 | \$13 86 | \$3 03 | \$41,327 62 |
| 18 1/17/2006 | BTUC006 | Black Thunder | 114 | 13,877 00 | \$234,480 02 | \$16 90 | \$13 86 | \$3 03 | \$42,087 58 |
| 19 1/20/2006 | BTUC007 | Black Thunder | 109 | 13,137 70 | \$222,005 60 | \$16 90 | \$13 86 | \$3 03 | \$39,862 90 |
| 20 1/23/2006 | BTUC008 | Black Thunder | 114 | 13,861 20 | \$234,254 71 | \$16 90 | \$13 86 | \$3 04 | \$42,081 32 |
| 21 1/29/2006 | BTUC009 | Black Thunder | 115 | 13,986 70 | \$236,365 34 | \$16 90 | \$13 86 | \$3 04 | \$42,452 00 |
| 22 1/29/2006 | BTUC010 | Black Thunder | 112 | 13,616 50 | \$230,123 29 | \$16 90 | \$13 86 | \$3 04 | \$41,342 45 |
| 23 2/5/2006 | BTUC011 | Black Thunder | 113 | 13,742 30 | \$227,831 20 | \$16 58 | \$13 86 | \$2 71 | \$37,306 26 |
| 24 2/10/2006 | BTUC012 | Black Thunder | 113 | 13,501 60 | \$223,833 82 | \$16 58 | \$13 86 | \$2 71 | \$36,645 97 |
| 25 2/11/2006 | BTUC013 | Black Thunder | 113 | 13,740 50 | \$227,805 53 | \$16 58 | \$13 86 | \$2 72 | \$37,305 54 |
| 26 2/19/2006 | BTUC014 | Black Thunder | 115 | 13,950 20 | \$231,244 85 | \$16 58 | \$13 86 | \$2 71 | \$37,837 55 |
| 27 2/20/2006 | BTUC015 | Black Thunder | 115 | 13,241 20 | \$219,524 51 | \$16 58 | \$13 86 | \$2 71 | \$35,946 88 |
| 28 2/25/2006 | BTUC016 | Black Thunder | 115 | 13,450 05 | \$222,962 71 | \$16 58 | \$13 86 | \$2 71 | \$36,489 56 |
| 29 2/26/2006 | BTUC017 | Black Thunder | 113 | 13,419 60 | \$226,017 86 | \$16 84 | \$13 86 | \$2 98 | \$39,966 87 |
| 30 3/1/2006 | BTUC018 | Black Thunder | 116 | 13,958 80 | \$232,924 49 | \$16 69 | \$13 86 | \$2 82 | \$39,397 96 |
| 31 3/3/2006 | BTUC019 | Black Thunder | 115 | 13,977 70 | \$233,247 00 | \$16 69 | \$13 86 | \$2 82 | \$39,458 44 |
| 32 3/4/2006 | BTUC020 | Black Thunder | 109 | 13,258 75 | \$221,224 78 | \$16 69 | \$13 86 | \$2 82 | \$37,403 83 |
| 33 Sub Total | | | 2,265 | 270,835 70 | \$4,574,932 80 | \$16 89 | | | \$820,033 20 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Total Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|---------------------|-------------------------|----------------|---|--|--------------|----------------------------------|------------------------|
| 34 3/10/2006 | SBLUC001 | Black Thunder South | 116 | 14,137 60 | \$235,822 18 | \$16 68 | \$13 66 | \$3 02 | \$42,651 13 |
| 35 3/12/2006 | SBLUC002 | Black Thunder South | 110 | 13,378 05 | \$223,220 99 | \$16 69 | \$13 66 | \$3 02 | \$40,428 16 |
| 36 3/13/2006 | SBLUC003 | Black Thunder South | 115 | 13,889 75 | \$231,762 84 | \$16 69 | \$13 66 | \$3 02 | \$41,978 33 |
| 37 3/16/2006 | SBLUC004 | Black Thunder South | 111 | 13,531 25 | \$225,811 63 | \$16 69 | \$13 66 | \$3 02 | \$40,925 53 |
| 38 3/18/2006 | SBLUC005 | Black Thunder South | 114 | 13,929 75 | \$232,382 24 | \$16 68 | \$13 66 | \$3 02 | \$42,051 18 |
| 39 Sub Total | | | 566 | 68,866 40 | \$1,148,999.88 | \$16 68 | | | \$208,034 34 |
| 40 1/1/2006 | CALUC001 | Caballo | 115 | 11,783 73 | \$232,892 62 | \$19 76 | \$14 44 | \$5 32 | \$62,739 42 |
| 41 2/22/2006 | CALUC002 | Caballo | 113 | 13,297 23 | \$220,467 50 | \$16 58 | \$14 44 | \$2 14 | \$28,459 85 |
| 42 3/21/2006 | CALUC003 | Caballo | 114 | 13,713 60 | \$228,843 94 | \$16 69 | \$14 44 | \$2 25 | \$30,824 05 |
| 43 3/28/2006 | CALUC004 | Caballo | 110 | 13,291 00 | \$221,759 66 | \$16 68 | \$14 44 | \$2 25 | \$28,841 97 |
| 44 Sub Total | | | 452 | 52,085.56 | \$903,963 72 | \$17 36 | | | \$151,865.29 |
| 45 3/6/2006 | JRLUC001 | Jacobs Ranch | 117 | 14,121 32 | \$235,650 95 | \$16 69 | \$13 84 | \$2 84 | \$40,147 37 |
| 46 Sub Total | | | 117 | 14,121 32 | \$235,650.95 | \$16.69 | | | \$40,147 37 |
| 2Q 2006 | | | | | | | | | |
| 47 4/7/2006 | BAMLUC012 | Belle Ayr | 111 | 13,521 08 | \$225,555 53 | \$16 68 | \$14 55 | \$2 13 | \$28,766 09 |
| 48 4/14/2006 | BAMLUC013 | Belle Ayr | 113 | 13,728 25 | \$228,089 85 | \$16 69 | \$14 55 | \$2 13 | \$29,285 13 |
| 49 4/22/2006 | BAMLUC014 | Belle Ayr | 113 | 13,777 70 | \$229,918 00 | \$16 69 | \$14 55 | \$2 13 | \$29,393 57 |
| 50 5/21/2006 | BAMLUC015 | Belle Ayr | 114 | 13,764 18 | \$232,643 14 | \$16 90 | \$14 55 | \$2 35 | \$32,315 56 |
| 51 5/27/2006 | BAMLUC016 | Belle Ayr | 115 | 13,876 18 | \$234,444 26 | \$16 90 | \$14 55 | \$2 34 | \$32,486 60 |
| 52 6/4/2006 | BAMLUC017 | Belle Ayr | 114 | 13,790 75 | \$237,468 10 | \$17 22 | \$14 55 | \$2 67 | \$36,753 74 |
| 53 6/12/2006 | BAMLUC018 | Belle Ayr | 113 | 13,653 38 | \$235,151 13 | \$17 22 | \$14 55 | \$2 67 | \$36,436 16 |
| 54 Sub Total | | | 793 | 96,111 50 | \$1,624,280.01 | \$16.90 | | | \$225,446.86 |
| 55 4/11/2006 | BTLUC021 | Black Thunder | 112 | 13,617 10 | \$227,219 85 | \$16 69 | \$14 20 | \$2 49 | \$33,887 32 |
| 56 4/18/2006 | BTLUC022 | Black Thunder | 111 | 13,511 10 | \$225,413 29 | \$16 68 | \$14 20 | \$2 49 | \$33,585 72 |
| 57 4/25/2006 | BTLUC023 | Black Thunder | 109 | 13,131 25 | \$219,079 63 | \$16 68 | \$14 20 | \$2 49 | \$32,645 09 |
| 58 4/30/2006 | BTLUC024 | Black Thunder | 113 | 13,711 75 | \$228,751 56 | \$16 68 | \$14 20 | \$2 49 | \$34,075 21 |
| 59 5/6/2006 | BTLUC025 | Black Thunder | 116 | 14,073 00 | \$237,800 98 | \$16 90 | \$14 20 | \$2 70 | \$37,985 68 |
| 60 5/8/2006 | BTLUC026 | Black Thunder | 114 | 13,734 05 | \$232,099 55 | \$16 90 | \$14 20 | \$2 70 | \$37,106 59 |
| 61 5/13/2006 | BTLUC027 | Black Thunder | 116 | 14,095 75 | \$238,241 40 | \$16 90 | \$14 20 | \$2 70 | \$38,113 10 |
| 62 5/15/2006 | BTLUC028 | Black Thunder | 114 | 13,739 55 | \$232,177 98 | \$16 90 | \$14 20 | \$2 70 | \$37,106 93 |
| 63 5/16/2006 | BTLUC029 | Black Thunder | 115 | 13,970 05 | \$236,012 91 | \$16 89 | \$14 20 | \$2 70 | \$37,669 27 |
| 64 5/23/2006 | BTLUC030 | Black Thunder | 114 | 13,785 35 | \$232,945 09 | \$16 90 | \$14 20 | \$2 70 | \$37,223 78 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|---------------------|-------------------------|----------------|------------------------------------|--|--------------|----------------------------------|------------------------|
| 65 6/2/2006 | BTLUC031 | Black Thunder | 107 | 13,004.55 | \$223,964.88 | \$17.22 | \$14.20 | \$3.02 | \$39,329.19 |
| 66 6/6/2006 | BTLUC032 | Black Thunder | 113 | 13,770.45 | \$237,159.62 | \$17.22 | \$14.20 | \$3.02 | \$41,649.86 |
| 67 6/10/2006 | BTLUC033 | Black Thunder | 115 | 13,984.90 | \$240,824.67 | \$17.22 | \$14.20 | \$3.02 | \$42,270.20 |
| 68 6/16/2006 | BTLUC034 | Black Thunder | 114 | 13,866.80 | \$238,780.57 | \$17.22 | \$14.20 | \$3.02 | \$41,902.85 |
| 69 Sub Total | | | 1,583 | 191,995.65 | \$3,250,471.98 | \$16.93 | | | \$524,560.78 |
| 70 4/6/2006 | sbluc006 | Black Thunder South | 113 | 13,799.15 | \$230,223.88 | \$16.68 | \$14.05 | \$2.64 | \$36,375.98 |
| 71 5/4/2006 | SBTLUC007 | Black Thunder South | 112 | 13,600.10 | \$229,777.43 | \$16.90 | \$14.05 | \$2.85 | \$38,725.75 |
| 72 5/9/2006 | SBTLUC008 | Black Thunder South | 118 | 14,324.30 | \$242,024.52 | \$16.90 | \$14.05 | \$2.85 | \$40,799.41 |
| 73 6/13/2006 | SBTLUC009 | Black Thunder South | 116 | 14,139.60 | \$243,506.70 | \$17.22 | \$14.05 | \$3.17 | \$44,876.22 |
| 74 6/19/2006 | SBLUC010 | Black Thunder South | 113 | 13,778.45 | \$237,273.70 | \$17.22 | \$14.05 | \$3.17 | \$43,716.59 |
| 75 6/21/2006 | SBLUC011 | Black Thunder South | 110 | 13,384.45 | \$230,462.26 | \$17.22 | \$14.05 | \$3.17 | \$42,439.99 |
| 76 6/29/2006 | SBLUC012 | Black Thunder South | 114 | 13,868.05 | \$238,798.39 | \$17.22 | \$14.05 | \$3.17 | \$43,982.60 |
| 77 Sub Total | | | 796 | 96,894.10 | \$1,652,066.88 | \$17.06 | | | \$290,916.55 |
| 78 4/3/2006 | CALUC005 | Caballo | 114 | 13,769.98 | \$229,761.91 | \$16.69 | \$14.52 | \$2.16 | \$28,768.72 |
| 79 6/24/2006 | CALUC006 | Caballo | 115 | 14,033.32 | \$241,630.14 | \$17.22 | \$14.52 | \$2.69 | \$37,812.23 |
| 80 Sub Total | | | 229 | 27,803.30 | \$471,392.05 | \$16.95 | | | \$67,580.95 |
| 81 4/15/2006 | JRLUC002 | Jacobs Ranch | 114 | 13,773.51 | \$229,812.18 | \$16.69 | \$14.31 | \$2.37 | \$32,681.12 |
| 82 4/22/2006 | JRLUC003 | Jacobs Ranch | 115 | 13,879.00 | \$231,609.54 | \$16.69 | \$14.31 | \$2.38 | \$32,968.60 |
| 83 5/2/2006 | JRLUC004 | Jacobs Ranch | 113 | 13,639.42 | \$230,432.06 | \$16.89 | \$14.31 | \$2.58 | \$35,220.14 |
| 84 5/19/2006 | JRLUC005 | Jacobs Ranch | 111 | 13,531.28 | \$228,697.98 | \$16.80 | \$14.31 | \$2.59 | \$35,033.80 |
| 85 5/26/2006 | JRLUC006 | Jacobs Ranch | 108 | 13,165.18 | \$222,511.47 | \$16.90 | \$14.31 | \$2.59 | \$34,086.96 |
| 86 5/31/2006 | JRLUC007 | Jacobs Ranch | 115 | 13,967.09 | \$235,970.63 | \$16.89 | \$14.31 | \$2.58 | \$36,068.99 |
| 87 6/20/2006 | JRLUC008 | Jacobs Ranch | 109 | 13,187.97 | \$227,082.38 | \$17.22 | \$14.31 | \$2.91 | \$38,331.76 |
| 88 6/29/2006 | JRLUC009 | Jacobs Ranch | 116 | 14,039.53 | \$241,731.70 | \$17.22 | \$14.31 | \$2.91 | \$40,793.20 |
| 89 Sub Total | | | 901 | 109,182.96 | \$1,847,847.94 | \$16.92 | | | \$285,184.56 |
| 3Q 2006 | | | | | | | | | |
| 90 7/1/2006 | BAMLUC019 | Belle Ayr | 115 | 14,020.43 | \$245,931.26 | \$17.54 | \$14.82 | \$2.72 | \$38,158.25 |
| 91 7/9/2006 | BAMLUC020 | Belle Ayr | 115 | 13,997.93 | \$245,495.41 | \$17.54 | \$14.82 | \$2.72 | \$38,055.83 |
| 92 7/16/2006 | BAMLUC021 | Belle Ayr | 115 | 13,980.48 | \$245,246.57 | \$17.54 | \$14.82 | \$2.72 | \$38,065.59 |
| 93 7/22/2006 | BAMLUC022 | Belle Ayr | 114 | 13,874.85 | \$243,341.36 | \$17.54 | \$14.82 | \$2.72 | \$37,725.67 |
| 94 7/24/2006 | BAMLUC023 | Belle Ayr | 115 | 14,028.40 | \$246,044.98 | \$17.54 | \$14.82 | \$2.72 | \$38,153.78 |
| 95 8/1/2006 | BAMLUC024 | Belle Ayr | 115 | 14,028.78 | \$246,050.33 | \$17.54 | \$14.82 | \$2.72 | \$38,153.57 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Total Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|---------------------|-------------------------|----------------|---|--|--------------|----------------------------------|------------------------|
| 96 8/6/2006 | BAMLUC025 | Belle Ayr | 115 | 14,026 20 | \$246,013 61 | \$17 54 | \$14 82 | \$2 72 | \$38,155 01 |
| 97 8/16/2006 | BAMLUC026 | Belle Ayr | 115 | 14,011 28 | \$245,800 78 | \$17 54 | \$14 82 | \$2 72 | \$38,163 36 |
| 98 8/19/2006 | BAMLUC027 | Belle Ayr | 113 | 13,658 38 | \$239,516 43 | \$17 54 | \$14 82 | \$2 72 | \$37,108 75 |
| 99 8/25/2006 | BAMLUC028 | Belle Ayr | 115 | 14,008 18 | \$245,756 58 | \$17 54 | \$14 82 | \$2 72 | \$38,165 10 |
| 100 8/30/2006 | BAMLUC029 | Belle Ayr | 114 | 13,783 28 | \$241,807 50 | \$17 54 | \$14 82 | \$2 72 | \$37,548 88 |
| 101 9/1/2006 | BAMLUC030 | Belle Ayr | 115 | 13,996 75 | \$246,973 66 | \$17 65 | \$14 82 | \$2 83 | \$39,551 49 |
| 102 9/2/2006 | BAMLUC031 | Belle Ayr | 115 | 14,012 83 | \$247,317 88 | \$17 65 | \$14 82 | \$2 83 | \$39,657 49 |
| 103 9/8/2006 | bamluc032 | Belle Ayr | 111 | 13,528 48 | \$238,759 05 | \$17 65 | \$14 82 | \$2 83 | \$38,276 39 |
| 104 9/15/2006 | BAMLUC033 | Belle Ayr | 114 | 13,781 78 | \$243,154 11 | \$17 64 | \$14 82 | \$2 82 | \$38,917 72 |
| 105 9/24/2006 | BMLUC034 | Belle Ayr | 115 | 14,038 03 | \$247,677 24 | \$17 64 | \$14 82 | \$2 82 | \$39,643 41 |
| 106 Sub Total | | | 1,831 | 222,776.00 | \$3,914,886 75 | \$17 57 | | | \$613,500.30 |
| 107 7/29/2006 | BTLUC035 | Black Thunder | 114 | 13,808 35 | \$242,165 07 | \$17 54 | \$14 44 | \$3 09 | \$42,728 35 |
| 108 8/7/2006 | BTLUC036 | Black Thunder | 116 | 14,105 35 | \$247,426 29 | \$17 54 | \$14 44 | \$3 10 | \$43,699 94 |
| 109 8/14/2006 | BTLUC037 | Black Thunder | 116 | 14,125 50 | \$247,713 63 | \$17 54 | \$14 44 | \$3 09 | \$43,696 25 |
| 110 8/23/2006 | BTLUC038 | Black Thunder | 115 | 14,003 65 | \$245,577 05 | \$17 54 | \$14 44 | \$3 09 | \$43,319 58 |
| 111 9/28/2006 | BTLUC039 | Black Thunder | 112 | 13,554 40 | \$239,205 74 | \$17 65 | \$14 44 | \$3 20 | \$43,436 87 |
| 112 Sub Total | | | 573 | 69,597 25 | \$1,222,087 78 | \$17 56 | | | \$216,881.01 |
| 113 7/8/2006 | SBLUC013 | Black Thunder South | 111 | 13,519 30 | \$237,074 22 | \$17 54 | \$14 34 | \$3 19 | \$43,145 38 |
| 114 7/15/2006 | SBLUC014 | Black Thunder South | 114 | 13,848 35 | \$242,849 47 | \$17 54 | \$14 34 | \$3 19 | \$44,200 54 |
| 115 9/10/2006 | SBLUC015 | Black Thunder South | 115 | 14,012 00 | \$247,306 12 | \$17 65 | \$14 34 | \$3 31 | \$46,309 70 |
| 116 9/18/2006 | SBLUC016 | Black Thunder South | 115 | 14,081 90 | \$248,532 89 | \$17 65 | \$14 34 | \$3 30 | \$46,533 78 |
| 117 9/22/2006 | SBLUC017 | Black Thunder South | 114 | 13,774 35 | \$243,048 23 | \$17 64 | \$14 34 | \$3 30 | \$45,460 80 |
| 118 9/24/2006 | SBLUC018 | Black Thunder South | 115 | 13,993 05 | \$246,920 89 | \$17 65 | \$14 34 | \$3 30 | \$46,196 30 |
| 119 Sub Total | | | 684 | 83,228 95 | \$1,466,731 82 | \$17 61 | | | \$271,846.49 |
| 120 7/27/2006 | CALUC007 | Caballo | 116 | 14,017 38 | \$245,823 84 | \$17 54 | \$14 84 | \$2 70 | \$37,857 51 |
| 121 8/4/2006 | CALUC008 | Caballo | 117 | 14,137 04 | \$247,926 19 | \$17 54 | \$14 84 | \$2 70 | \$38,184 55 |
| 122 8/12/2006 | CALUC009 | Caballo | 115 | 13,920 26 | \$244,157 91 | \$17 54 | \$14 84 | \$2 70 | \$37,632 49 |
| 123 Sub Total | | | 348 | 42,074 68 | \$737,907 94 | \$17 54 | | | \$113,674 55 |
| 124 7/9/2006 | JRLUC010 | Jacobs Ranch | 107 | 12,937 85 | \$226,972 74 | \$17 54 | \$14 66 | \$2 88 | \$37,279 91 |
| 125 7/18/2006 | JRLUC011 | Jacobs Ranch | 112 | 13,538 91 | \$237,416 79 | \$17 54 | \$14 66 | \$2 87 | \$38,911 38 |
| 126 9/9/2006 | JRLUC012 | Jacobs Ranch | 115 | 14,006 13 | \$247,107 34 | \$17 64 | \$14 66 | \$2 98 | \$41,751 62 |
| 127 9/17/2006 | JRLUC013 | Jacobs Ranch | 112 | 13,172 92 | \$232,421 84 | \$17 64 | \$14 66 | \$2 98 | \$39,282 44 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Total Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|---------------------|-------------------------|----------------|---|--|--------------|----------------------------------|------------------------|
| 128 Sub Total | | | 446 | 53,655.80 | \$943,918.71 | \$17.59 | | | \$157,225.34 |
| 4Q 2006 | | | | | | | | | |
| 129 10/2/2006 | BAMLUC035 | Belle Ayr | 115 | 14,087.95 | \$251,609.17 | \$17.86 | \$14.26 | \$3.60 | \$50,662.26 |
| 130 10/9/2006 | BAMLUC036 | Belle Ayr | 115 | 13,983.43 | \$249,773.64 | \$17.86 | \$14.26 | \$3.60 | \$50,317.65 |
| 131 10/16/2006 | BAMLUC037 | Belle Ayr | 115 | 13,986.33 | \$249,814.99 | \$17.86 | \$14.26 | \$3.60 | \$50,317.64 |
| 132 10/18/2006 | BAMLUC038 | Belle Ayr | 115 | 13,882.88 | \$247,894.80 | \$17.86 | \$14.26 | \$3.60 | \$49,973.03 |
| 133 10/26/2006 | BAMLUC039 | Belle Ayr | 113 | 13,647.00 | \$243,761.22 | \$17.86 | \$14.26 | \$3.60 | \$49,103.91 |
| 134 11/3/2006 | BAMLUC040 | Belle Ayr | 115 | 14,006.20 | \$242,623.41 | \$17.32 | \$14.26 | \$3.06 | \$42,842.56 |
| 135 11/10/2006 | BAMLUC041 | Belle Ayr | 115 | 13,903.83 | \$240,933.54 | \$17.33 | \$14.26 | \$3.06 | \$42,612.95 |
| 136 11/20/2006 | BAMLUC042 | Belle Ayr | 115 | 14,015.90 | \$242,876.73 | \$17.33 | \$14.26 | \$3.06 | \$42,957.53 |
| 137 11/23/2006 | BAMLUC043 | Belle Ayr | 114 | 13,777.83 | \$238,765.78 | \$17.33 | \$14.26 | \$3.07 | \$42,242.42 |
| 138 12/1/2006 | BAMLUC044 | Belle Ayr | 113 | 13,738.13 | \$230,709.66 | \$16.79 | \$14.26 | \$2.53 | \$34,752.57 |
| 139 12/1/2006 | BAMLUC045 | Belle Ayr | 114 | 13,777.80 | \$231,356.85 | \$16.79 | \$14.26 | \$2.53 | \$34,832.42 |
| 140 12/8/2006 | BAMLUC046 | Belle Ayr | 113 | 13,746.08 | \$230,823.03 | \$16.79 | \$14.26 | \$2.53 | \$34,752.54 |
| 141 12/14/2006 | BAMLUC047 | Belle Ayr | 116 | 14,136.18 | \$237,309.86 | \$16.79 | \$14.26 | \$2.52 | \$35,675.08 |
| 142 12/24/2006 | BAMLUC048 | Belle Ayr | 114 | 13,831.23 | \$232,231.27 | \$16.79 | \$14.26 | \$2.53 | \$34,946.22 |
| 143 Sub Total | | | 1,602 | 194,520.83 | \$3,370,583.95 | \$17.33 | | | \$595,988.78 |
| 144 10/4/2006 | BTLUC040 | Black Thunder | 111 | 13,430.80 | \$239,919.21 | \$17.86 | \$14.58 | \$3.28 | \$44,031.14 |
| 145 10/14/2006 | BTLUC041 | Black Thunder | 115 | 13,988.55 | \$249,846.72 | \$17.86 | \$14.58 | \$3.28 | \$45,823.87 |
| 146 12/7/2006 | BTLUC042 | Black Thunder | 116 | 14,049.45 | \$235,957.16 | \$16.79 | \$14.58 | \$2.21 | \$31,046.09 |
| 147 12/7/2006 | BTLUC043 | Black Thunder | 113 | 13,500.65 | \$226,645.27 | \$16.79 | \$14.58 | \$2.20 | \$28,738.44 |
| 148 12/17/2006 | BTLUC044 | Black Thunder | 113 | 13,652.50 | \$229,262.65 | \$16.79 | \$14.58 | \$2.21 | \$30,141.09 |
| 149 12/28/2006 | BTLUC045 | Black Thunder | 115 | 13,995.50 | \$234,995.83 | \$16.79 | \$14.58 | \$2.21 | \$30,871.62 |
| 150 12/29/2006 | BTLUC046 | Black Thunder | 113 | 13,675.05 | \$229,584.21 | \$16.79 | \$14.58 | \$2.20 | \$30,133.76 |
| 151 Sub Total | | | 796 | 96,292.60 | \$1,646,211.05 | \$17.10 | | | \$241,785.99 |
| 152 10/2/2006 | SBLUC019 | Black Thunder South | 115 | 14,006.85 | \$250,222.68 | \$17.86 | \$13.80 | \$4.06 | \$56,886.86 |
| 153 10/12/2006 | SBLUC020 | Black Thunder South | 115 | 13,879.70 | \$247,949.52 | \$17.86 | \$13.80 | \$4.06 | \$56,368.74 |
| 154 11/4/2006 | SBLUC021 | Black Thunder South | 113 | 13,685.15 | \$237,073.24 | \$17.32 | \$13.80 | \$3.52 | \$48,177.83 |
| 155 11/13/2006 | SBLUC022 | Black Thunder South | 116 | 14,010.15 | \$242,704.74 | \$17.32 | \$13.80 | \$3.52 | \$49,323.37 |
| 156 Sub Total | | | 459 | 55,581.85 | \$977,950.18 | \$17.59 | | | \$210,766.79 |
| 157 10/26/2006 | CALUC010 | Caballo | 113 | 13,726.44 | \$245,120.03 | \$17.86 | \$14.26 | \$3.60 | \$49,431.47 |
| 158 11/4/2006 | CALUC011 | Caballo | 114 | 13,847.56 | \$239,874.21 | \$17.32 | \$14.26 | \$3.07 | \$42,458.92 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/1/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|---------------------|-------------------------|----------------|------------------------------------|--|--------------|----------------------------------|------------------------|
| Total | | | | | | | | | |
| 159 11/13/2006 | CALUC012 | Caballo | 116 | 14,123.86 | \$244,674.24 | \$17.32 | \$14.26 | \$3.07 | \$43,319.93 |
| 160 12/25/2006 | CALUC013 | Caballo | 115 | 13,972.29 | \$234,664.86 | \$16.80 | \$14.26 | \$2.54 | \$35,471.38 |
| 161 Sub Total | | | 458 | 55,670.15 | \$964,333.34 | \$17.32 | | | \$170,681.70 |
| 162 10/22/2006 | JRLUC014 | Jacobs Ranch | 115 | 13,994.90 | \$249,937.27 | \$17.86 | \$14.92 | \$2.94 | \$41,134.37 |
| 163 11/21/2006 | JRLUC015 | Jacobs Ranch | 116 | 14,085.83 | \$244,015.94 | \$17.32 | \$14.92 | \$2.40 | \$33,856.37 |
| 164 11/28/2006 | JRLUC016 | Jacobs Ranch | 114 | 13,892.76 | \$240,746.69 | \$17.33 | \$14.92 | \$2.41 | \$33,467.79 |
| 165 12/17/2006 | JRLUC017 | Jacobs Ranch | 115 | 13,980.43 | \$234,780.93 | \$16.79 | \$14.92 | \$1.87 | \$26,193.92 |
| 166 12/19/2006 | JRLUC018 | Jacobs Ranch | 115 | 13,981.34 | \$234,793.84 | \$16.79 | \$14.92 | \$1.87 | \$26,193.33 |
| 167 Sub Total | | | 575 | 69,935.25 | \$1,204,274.67 | \$17.22 | | | \$160,845.78 |
| 1Q 2007 | | | | | | | | | |
| 168 1/7/2007 | BAMLUC001 | Belle Ayr | 113 | 13,648.08 | \$238,334.95 | \$17.46 | \$14.37 | \$3.10 | \$42,244.88 |
| 169 1/19/2007 | BAMLUC002 | Belle Ayr | 111 | 13,286.35 | \$232,001.57 | \$17.46 | \$14.37 | \$3.09 | \$41,108.62 |
| 170 1/29/2007 | BAMLUC003 | Belle Ayr | 113 | 13,109.90 | \$230,871.43 | \$17.61 | \$14.37 | \$3.24 | \$42,513.64 |
| 171 2/2/2007 | BAMLUC004 | Belle Ayr | 113 | 13,680.65 | \$241,982.04 | \$17.69 | \$14.37 | \$3.32 | \$45,423.95 |
| 172 2/7/2007 | BAMLUC005 | Belle Ayr | 112 | 13,023.58 | \$231,740.32 | \$17.79 | \$14.37 | \$3.43 | \$44,622.82 |
| 173 2/11/2007 | BAMLUC006 | Belle Ayr | 115 | 13,164.55 | \$237,947.65 | \$18.07 | \$14.37 | \$3.71 | \$48,804.68 |
| 174 3/14/2007 | BMLUC007 | Belle Ayr | 116 | 14,103.18 | \$244,762.09 | \$17.36 | \$14.37 | \$2.99 | \$42,133.33 |
| 175 3/20/2007 | BMLUC008 | Belle Ayr | 116 | 14,121.18 | \$245,029.03 | \$17.35 | \$14.37 | \$2.98 | \$42,141.65 |
| 176 Sub Total | | | 909 | 108,137.45 | \$1,902,869.08 | \$17.59 | | | \$348,993.57 |
| 177 1/3/2007 | BTLUC001 | Black Thunder | 114 | 13,847.40 | \$241,836.94 | \$17.46 | \$16.21 | \$1.25 | \$17,335.67 |
| 178 2/22/2007 | BTLUC002 | Black Thunder | 119 | 14,471.05 | \$255,898.67 | \$17.68 | \$16.21 | \$1.47 | \$21,286.46 |
| 179 2/27/2007 | BTLUC003 | Black Thunder | 114 | 13,876.50 | \$245,346.50 | \$17.68 | \$16.21 | \$1.47 | \$20,373.45 |
| 180 3/2/2007 | BTLUC004 | Black Thunder | 115 | 14,012.85 | \$243,115.57 | \$17.35 | \$16.21 | \$1.14 | \$15,931.94 |
| 181 3/7/2007 | BTLUC005 | Black Thunder | 116 | 14,107.00 | \$244,818.81 | \$17.35 | \$16.21 | \$1.14 | \$16,108.77 |
| 182 3/10/2007 | BTLUC006 | Black Thunder | 114 | 13,841.40 | \$240,151.96 | \$17.35 | \$16.21 | \$1.14 | \$15,747.97 |
| 183 Sub Total | | | 692 | 84,156.20 | \$1,471,168.46 | \$17.48 | | | \$106,784.26 |
| 184 1/5/2007 | SBLUC001 | Black Thunder South | 114 | 13,877.80 | \$242,287.77 | \$17.46 | \$15.38 | \$2.08 | \$28,832.91 |
| 185 2/13/2007 | SBLUC002 | Black Thunder South | 112 | 13,396.80 | \$236,886.54 | \$17.68 | \$15.38 | \$2.30 | \$30,809.95 |
| 186 2/20/2007 | SBLUC003 | Black Thunder South | 113 | 13,332.05 | \$235,795.30 | \$17.69 | \$15.38 | \$2.31 | \$30,734.64 |
| 187 Sub Total | | | 339 | 40,606.65 | \$714,949.61 | \$17.61 | | | \$90,377.50 |
| 188 1/5/2007 | CALUC001 | Caballo | 113 | 13,653.04 | \$238,408.58 | \$17.46 | \$14.41 | \$3.06 | \$41,720.98 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2005 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Total Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|------------------|-------------------------|----------------|---|--|--------------|----------------------------------|------------------------|
| 189 1/10/2007 | CALUC002 | Caballo | 113 | 12,975 77 | \$230,871 43 | \$17 79 | \$14 41 | \$3 39 | \$43,940 68 |
| 190 1/21/2007 | CALUC003 | Caballo | 115 | 12,550 97 | \$234,957 65 | \$18 72 | \$14 41 | \$4 31 | \$54,146 63 |
| 191 1/22/2007 | CALUC004 | Caballo | 113 | 13,382 31 | \$233,715 66 | \$17 46 | \$14 41 | \$3 06 | \$40,928 24 |
| 192 2/3/2007 | CALUC005 | Caballo | 111 | 13,286 45 | \$235,000 05 | \$17 69 | \$14 41 | \$3 28 | \$43,593 60 |
| 193 3/1/2007 | CALUC006 | Caballo | 114 | 13,769 86 | \$238,977 02 | \$17 36 | \$14 41 | \$2 95 | \$40,606 50 |
| 194 3/9/2007 | CALUC007 | Caballo | 114 | 13,775 95 | \$239,067 34 | \$17 35 | \$14 41 | \$2 95 | \$40,609 08 |
| 195 3/16/2007 | CALUC008 | Caballo | 116 | 14,028 26 | \$243,419 10 | \$17 35 | \$14 41 | \$2 95 | \$41,326 03 |
| 196 3/23/2007 | CALUC009 | Caballo | 116 | 14,028 36 | \$243,420 58 | \$17 35 | \$14 41 | \$2 95 | \$41,326 07 |
| 197 Sub Total | | | 1,025 | 121,450.97 | \$2,137,837 41 | \$17.60 | | | \$388,197 81 |
| 198 1/8/2007 | JRLUC001 | Jacobs Ranch | 113 | 13,733 19 | \$239,823 13 | \$17 46 | \$15 18 | \$2 28 | \$31,335 37 |
| 199 1/13/2007 | JRLUC002 | Jacobs Ranch | 113 | 13,694 83 | \$239,141 33 | \$17 46 | \$15 18 | \$2 28 | \$31,235 85 |
| 200 2/11/2007 | JRLUC003 | Jacobs Ranch | 116 | 13,853 11 | \$244,997 55 | \$17 69 | \$15 18 | \$2 50 | \$34,689 25 |
| 201 2/19/2007 | JRLUC004 | Jacobs Ranch | 116 | 13,401 05 | \$240,016 76 | \$17 91 | \$15 18 | \$2 73 | \$36,571 32 |
| 202 2/20/2007 | JRLUC005 | Jacobs Ranch | 115 | 12,645 41 | \$237,947 65 | \$18 82 | \$15 18 | \$3 64 | \$45,973 82 |
| 203 2/26/2007 | JRLUC006 | Jacobs Ranch | 116 | 14,100 48 | \$249,362 04 | \$17 68 | \$15 18 | \$2 50 | \$35,298 34 |
| 204 3/5/2007 | JRLUC007 | Jacobs Ranch | 116 | 14,097 66 | \$244,564 22 | \$17 35 | \$15 18 | \$2 17 | \$30,543 33 |
| 205 3/11/2007 | JRLUC008 | Jacobs Ranch | 116 | 14,112 86 | \$244,905 64 | \$17 35 | \$15 18 | \$2 17 | \$30,653 99 |
| 206 3/17/2007 | JRLUC009 | Jacobs Ranch | 117 | 14,183 91 | \$246,149 31 | \$17 35 | \$15 18 | \$2 17 | \$30,819 03 |
| 207 3/18/2007 | JRLUC010 | Jacobs Ranch | 115 | 13,960 68 | \$242,226 88 | \$17 35 | \$15 18 | \$2 17 | \$30,285 45 |
| 208 3/25/2007 | JRLUC011 | Jacobs Ranch | 114 | 13,890 74 | \$240,997 60 | \$17 35 | \$15 18 | \$2 17 | \$30,118 03 |
| 209 3/26/2007 | JRLUC012 | Jacobs Ranch | 116 | 14,081 34 | \$244,322 27 | \$17 35 | \$15 18 | \$2 17 | \$30,549 06 |
| 210 Sub Total | | | 1,383 | 165,755 22 | \$2,914,454 38 | \$17 58 | | | \$388,072.86 |
| 2Q 2007 | | | | | | | | | |
| 211 4/4/2007 | BAMLUC009 | Belle Ayr | 115 | 13,992 75 | \$242,817 48 | \$17 35 | \$14 96 | \$2 40 | \$33,548 69 |
| 212 4/12/2007 | BAMLUC010 | Belle Ayr | 115 | 13,543 20 | \$235,000 66 | \$17 35 | \$14 96 | \$2 40 | \$32,455 12 |
| 213 5/27/2007 | BAMLUC011 | Belle Ayr | 116 | 14,142 00 | \$234,781 86 | \$16 60 | \$14 96 | \$1 65 | \$23,280 96 |
| 214 6/3/2007 | BAMLUC012 | Belle Ayr | 116 | 14,139 43 | \$237,991 67 | \$16 83 | \$14 96 | \$1 88 | \$26,529 28 |
| 215 6/12/2007 | BAMLUC013 | Belle Ayr | 116 | 14,129 53 | \$237,844 86 | \$16 83 | \$14 96 | \$1 88 | \$26,530 53 |
| 216 6/24/2007 | BAMLUC014 | Belle Ayr | 115 | 14,000 28 | \$235,684 08 | \$16 83 | \$14 96 | \$1 88 | \$26,302 75 |
| 217 6/30/2007 | BAMLUC015 | Belle Ayr | 115 | 14,010 18 | \$235,830 90 | \$16 83 | \$14 96 | \$1 88 | \$26,301 51 |
| 218 Sub Total | | | 808 | 97,957 35 | \$1,659,951.51 | \$16 95 | | | \$194,948.82 |
| 219 4/19/2007 | BTLUC007 | Black Thunder | 114 | 13,862 70 | \$240,581 84 | \$17 35 | \$14 44 | \$2 91 | \$40,341 18 |
| 220 Sub Total | | | 114 | 13,862.70 | \$240,581 84 | \$17 35 | | | \$40,341.18 |

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

| Shipped Date 1/ (1) | Transporter ID 1/ (2) | Origin 1/ (3) | No of Cars 1/ (4) | Tons 1/ (5) | Total Transportation Charge 1/ (6) | Transportation Rate Per Ton 2/ (7) | JT 3/ (8) | Overpayment Per Ton 4/ (9) | Reparations 5/ (10) |
|---------------------------|-----------------------------|---------------------|-------------------------|----------------|---|--|--------------|----------------------------------|------------------------|
| 221 4/4/2007 | SBLUC004 | Black Thunder South | 116 | 14,136 20 | \$245,251 85 | \$17 35 | \$14 47 | \$2 88 | \$40,728 97 |
| 222 4/13/2007 | SBLUC005 | Black Thunder South | 114 | 13,770 55 | \$238,987 26 | \$17 35 | \$14 47 | \$2 89 | \$39,754 62 |
| 223 Sub Total | | | 230 | 27,906 75 | \$484,239 11 | \$17.35 | | | \$80,483 59 |
| 224 4/6/2007 | CALUC010 | Caballo | 116 | 14,039 72 | \$243,589 05 | \$17 35 | \$15 00 | \$2 35 | \$33,054 60 |
| 225 4/27/2007 | CALUC011 | Caballo | 116 | 13,934 81 | \$228,461 23 | \$16 40 | \$15 00 | \$1 40 | \$19,499 97 |
| 226 5/3/2007 | CALUC012 | Caballo | 116 | 14,079 88 | \$233,860 62 | \$16 61 | \$15 00 | \$1 61 | \$22,723 94 |
| 227 5/13/2007 | CALUC013 | Caballo | 115 | 13,994 53 | \$232,378 88 | \$16 60 | \$15 00 | \$1 61 | \$22,522 08 |
| 228 5/24/2007 | CALUC014 | Caballo | 115 | 14,025 50 | \$232,838 17 | \$16 60 | \$15 00 | \$1 61 | \$22,516 95 |
| 229 6/1/2007 | CALUC015 | Caballo | 116 | 14,133 45 | \$237,903 06 | \$16 83 | \$15 00 | \$1 84 | \$25,983 06 |
| 230 6/10/2007 | CALUC016 | Caballo | 115 | 14,033 10 | \$236,170 87 | \$16 83 | \$15 00 | \$1 83 | \$25,735 69 |
| 231 6/16/2007 | CALUC017 | Caballo | 114 | 13,787 65 | \$232,286 85 | \$16 85 | \$15 00 | \$1 85 | \$25,532 34 |
| 232 6/17/2007 | CALUC018 | Caballo | 115 | 13,988 33 | \$235,506 93 | \$16 84 | \$15 00 | \$1 84 | \$25,743 10 |
| 233 Sub Total | | | 1,038 | 126,016 97 | \$2,112,995 66 | \$16 77 | | | \$223,291.73 |
| 234 4/1/2007 | JRLUC013 | Jacobs Ranch | 116 | 14,080 20 | \$244,305 29 | \$17 35 | \$14 66 | \$2 70 | \$37,955 37 |
| 235 4/9/2007 | JRLUC014 | Jacobs Ranch | 116 | 14,131 99 | \$245,189 34 | \$17 35 | \$14 66 | \$2 69 | \$38,080 42 |
| 236 4/14/2007 | JRLUC015 | Jacobs Ranch | 116 | 14,022 18 | \$243,328 86 | \$17 35 | \$14 66 | \$2 70 | \$37,829 24 |
| 237 4/16/2007 | JRLUC016 | Jacobs Ranch | 116 | 14,103 70 | \$244,769 87 | \$17 36 | \$14 66 | \$2 70 | \$38,075 47 |
| 238 4/23/2007 | JRLUC017 | Jacobs Ranch | 114 | 13,749 83 | \$238,565 90 | \$17 35 | \$14 66 | \$2 70 | \$37,057 66 |
| 239 4/25/2007 | JRLUC018 | Jacobs Ranch | 116 | 14,120 86 | \$245,024 28 | \$17 35 | \$14 66 | \$2 70 | \$38,078 47 |
| 240 4/29/2007 | JRLUC019 | Jacobs Ranch | 114 | 13,769 11 | \$225,057 83 | \$16 35 | \$14 66 | \$1 69 | \$23,267 04 |
| 241 5/2/2007 | JRLUC020 | Jacobs Ranch | 116 | 14,130 95 | \$233,921 99 | \$16 55 | \$14 66 | \$1 90 | \$26,828 24 |
| 242 5/5/2007 | JRLUC021 | Jacobs Ranch | 114 | 13,745 91 | \$227,791 77 | \$16 57 | \$14 66 | \$1 82 | \$26,340 98 |
| 243 5/10/2007 | JRLUC022 | Jacobs Ranch | 116 | 14,109 57 | \$233,604 92 | \$16 56 | \$14 66 | \$1 90 | \$26,824 50 |
| 244 5/16/2007 | JRLUC023 | Jacobs Ranch | 116 | 13,990 13 | \$231,833 63 | \$16 57 | \$14 66 | \$1 92 | \$26,803 64 |
| 245 5/20/2007 | JRLUC024 | Jacobs Ranch | 116 | 14,124 08 | \$233,820 03 | \$16 55 | \$14 66 | \$1 90 | \$26,827 03 |
| 246 5/25/2007 | JRLUC025 | Jacobs Ranch | 116 | 14,015 08 | \$232,203 56 | \$16 57 | \$14 66 | \$1 91 | \$26,807 99 |
| 247 6/1/2007 | JRLUC026 | Jacobs Ranch | 115 | 13,864 44 | \$232,979 57 | \$16 80 | \$14 66 | \$2 15 | \$28,791 68 |
| 248 6/20/2007 | JRLUC027 | Jacobs Ranch | 116 | 14,231 63 | \$238,663 07 | \$16 77 | \$14 66 | \$2 11 | \$30,093 82 |
| 249 6/22/2007 | JRLUC028 | Jacobs Ranch | 116 | 14,011 53 | \$235,398 99 | \$16 80 | \$14 66 | \$2 15 | \$30,055 38 |

EXHIBIT II-A-8
REDACTED


| | | |
|---|--|---|
|  <p>UP 111</p> | <p>Item: 4140-E Item Desc: MO, Ladue (Henry County) Montrose Generating Station</p> | |
| <p>Unit Coal Trains from SPRB to Montrose Generating Station, Ladue (Henry County), MO</p> | | |
| <p>For billing purposes use the following rate authority: UP 111-4140-E</p> | | |
| STCC/GROUP | STCC | DESCRIPTION |
| 11 | | Coal |
| <p>Prices are subject to Fuel surcharges</p> <p>GENERAL RULE ITEM 4140 (Revision A) Railroad's Cycle Time Estimate in Shipper Owned or Leased Equipment is 138 hours, subject to terms and conditions in Item 300 of Circular UP 111</p> <p>Minimum Volume Requirement for Option 2 rates is the greater of either 95 percent of Net Tons received at Montrose Generating Station, Ladue (Henry County), MO from Campbell and Converse Counties in Wyoming via all modes of transportation, or 1,600,000 Net Tons annually The maximum volume that Railroad will transport under this item is 2,100,000 Net Tons annually</p> | | |
| <p>GENERAL RATE APPLICATION RULES FOR ITEM 4140-E</p> | | |
| <p>1 Free time to unload will be 6 hour(s)</p> <p>2 Mileage allowance payment on private equipment will not apply</p> <p>3 Price applies in shipper owned or leased equipment</p> | | |
| | | |
| <p>APPLICATION AND RATES</p> | | |
| COLUMN | RATE APPLICATION RULES | |
| 2 | <p>Rates are in U S dollars Per Net Ton</p> <p>Subject to a minimum lading weight of 117 tons per car</p> <p>Price applies if minimum tender per shipment is 12,285 Net Ton(s)</p> | |
| 3 | <p>Rates are in U S dollars Per Net Ton</p> <p>Subject to a minimum lading weight of 117 tons per car</p> <p>Price applies if minimum tender per shipment is 12,285 Net Ton(s)</p> | |
| 4 | <p>Rates are in U S dollars Per Net Ton</p> <p>Subject to a minimum lading weight of 117 tons per car</p> <p>Price applies if minimum tender per shipment is 12,285 Net Ton(s)</p> | |
| | | |
| <p>Issued January 6, 2006 Effective January 1, 2006 Expiration December 31, 2008</p> | <p>UP 111</p> | <p>Page 1 of 2 Item 4140-E Continued on next page</p> |

Exhibit 11-A-9
Page 2 of 3

| | Col. 2 Option 2 Year 1 | Col. 3 Option 2 Year 2 | Col. 4 Option 2 Year 3 | Rate Code/Group |
|---|------------------------------|---|------------------------------|--------------------|
| STCC: 11 Coal From: ENERGY SPRB MINES GROUP To: MO, LADUE | Exp 12/31/2006 14.26 | LFT 01/01/2007 Exp 12/31/2007 14.83 | EFT 01/01/2008 15.42 | UP |

| APPLICATION AND RATES | | | | |
|---|---|---|------------------------------|--------------------|
| COLUMN | RATE APPLICATION RULES | | | |
| 2 | Rates are in U S dollars Per Net Ton Subject to a minimum lading weight of 100 tons per car Price applies if minimum tender per shipment is 11,000 Net Ton(s) | | | |
| 3 | Rates are in U S dollars Per Net Ton Subject to a minimum lading weight of 100 tons per car Price applies if minimum tender per shipment is 11,000 Net Ton(s) | | | |
| 4 | Rates are in U S dollars Per Net Ton Subject to a minimum lading weight of 100 tons per car Price applies if minimum tender per shipment is 11,000 Net Ton(s) | | | |
| | Col. 2 Option 2 Year 1 | Col. 3 Option 2 Year 2 | Col. 4 Option 2 Year 3 | Rate Code/Group |
| STCC: 11 Coal From: ENERGY SPRB MINES GROUP To: MO, LADUE | Exp 12/31/2006 16.68 | EFT 01/01/2007 Exp 12/31/2007 17.85 | EFT 01/01/2008 19.10 | UP |

APPENDIX A
ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

FNLRGY SPRB MINES GROUP
WY ANTELOPE MINE
WY BILLEY MINE
WY BLACK THUNDER MINE
WY BLACK THUNDER SOUTH
WY CABALLO MINE
WY CABALLO ROJO MINE
WY COAL CREEK MINE
WY CORDERO MINE
WY JACOBS RANCH MINE
WY N ANTELOPE MINE
WY ROCHELLE MINE

Issued January 6, 2006
Effective January 1, 2006
Expiration December 31, 2008

UP 111

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Item 4140-E

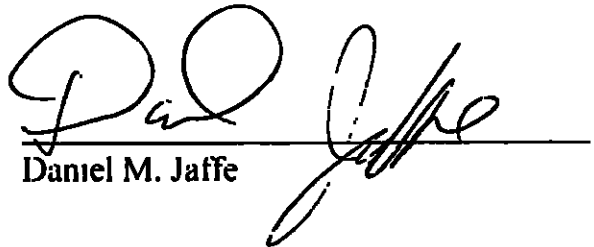
CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2007, I caused three copies of the foregoing Reply Evidence Narrative (together with associated exhibits and workpapers) of Complainant Kansas City Power & Light Company to be served by hand upon the following counsel for Defendant Union Pacific Railroad Company

Michael L. Rosenthal, Esq
Covington & Burling
1201 Pennsylvania Avenue, N W
Washington, D.C. 20004-2401

and by Federal Express, as follows

J. Michael Hemmer
Louise A Rinn
Gabriel S Meyer
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179


Daniel M. Jaffe